

Amendment No. 1 to SB0994

Crowe
Signature of Sponsor

AMEND Senate Bill No. 994*

House Bill No. 1146

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 68-11-1302(2), is amended by deleting the subdivision and substituting instead the following:

(2) "Cooperative agreement" means an agreement among two (2) or more hospitals for the consolidation by merger or other combination of assets, offering, provision, operation, planning, funding, pricing, contracting, utilization review or management of health services or for the sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic or laboratory facilities or procedures or other services traditionally offered by hospitals;

SECTION 2. Tennessee Code Annotated, Section 68-11-1303, is amended by deleting the section and substituting instead the following:

(a) It is the policy of this state, in certain instances, to displace competition among hospitals with regulation to the extent set forth in this part and to actively supervise that regulation to the fullest extent required by law, in order to promote cooperation and coordination among hospitals in the provision of health services and to provide state action immunity from federal and state antitrust law to the fullest extent possible to those hospitals issued a certificate of public advantage under this section.

(b) A hospital may negotiate and enter into cooperative agreements with other hospitals in the state, if the likely benefits resulting from the agreements outweigh any disadvantages attributable to a reduction in competition that may result from the agreements.

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(c) Parties to a cooperative agreement may apply to the department for a certificate of public advantage governing that cooperative agreement. The application shall include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials shall be submitted to the attorney general and reporter and to the department at the same time. The attorney general and reporter and the department are entrusted with the active and continuing oversight of all cooperative agreements.

(d) The department shall review the application in accordance with the standards set forth in subsection (e) and may hold a public hearing in accordance with the rules adopted by the department. The department shall give notice of the application to interested parties by publishing a notice in the Tennessee administrative register in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Any intervenor may intervene in the proceeding and shall have standing under the Uniform Administrative Procedures Act. The department shall grant or deny the application within one hundred twenty (120) days of the date of filing of the application, and that decision shall be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the attorney general and reporter and any intervenor. An intervenor aggrieved by a decision of the department to grant or deny the application shall have the right to appeal the department's decision, except that there shall be no stay of the department's decision

granting an application unless the administrative judge or a court of competent jurisdiction shall have issued a stay of the department's decision, which shall be accompanied by a supersedeas appeal bond from the intervenor. Additionally, if the intervenor shall appeal the department's decision and the appeal is unsuccessful, the intervenor shall be responsible for the costs of the appeal and attorneys' fees of the applicants.

(e)

(1) After consultation with and agreement from the attorney general and reporter, the department shall issue a certificate of public advantage for a cooperative agreement, if it determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(2) In evaluating the potential benefits of a cooperative agreement, the department shall consider whether the following benefits may result from the cooperative agreement:

(A) Enhancement of the quality of hospital and hospital-related care provided to Tennessee citizens;

(B) Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities;

(C) Gains in the cost-efficiency of services provided by the hospitals involved;

(D) Improvements in the utilization of hospital resources and equipment;

(E) Avoidance of duplication of hospital resources;

(F) Demonstration of population health improvement of the region served according to criteria set forth in the agreement and approved by the department;

(G) The extent to which medically underserved populations have access to and are projected to utilize the proposed services; and

(H) Any other benefits that may be identified.

(3) The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement shall include, but need not be limited to, the following factors:

(A) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed healthcare organizations or other healthcare payors to negotiate appropriate payment and service arrangements with hospitals, physicians, allied healthcare professionals or other healthcare providers;

(B) The extent of any reduction in competition among physicians, allied health professionals, other healthcare providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the cooperative agreement;

(C) The extent of any likely adverse impact on patients in the quality, availability and price of healthcare services; and

(D) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

(f) The department shall consult with the attorney general and reporter regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement. The attorney general and reporter may consult with the United States department of justice or the federal trade commission regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement.

(g) The department shall review, on at least an annual basis, each certificate of public advantage it has granted pursuant to this part. If the department determines that the likely benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department may first seek modification of the agreement with the consent of the parties. If such modification is not obtained, the department shall, at the request of the certificate of public advantage holder, initiate a contested case proceeding on the issue of modification or termination of the certificate of public advantage. If such proceedings are initiated, they shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The certificate of public advantage shall remain in full force and effect until such time as the certificate of public advantage holder has submitted, the department has approved, and the certificate holder has completed a plan of separation. The state action immunity and the department's active supervision shall continue until such time as the department issues an official determination that the plan of separation has been completed.

(h) The department shall maintain on file all cooperative agreements for which certificates of public advantage remain in effect. The holder of a certificate of public advantage who voluntarily seeks to terminate a cooperative agreement shall file a notice of termination with the department at least forty-five (45) days prior to termination. The department, in its discretion, may require a plan of separation before accepting the notice of termination.

SECTION 3. Tennessee Code Annotated, Section 68-11-1304, is amended by deleting the section and substituting instead the following:

Any applicant aggrieved by a decision of the department in granting or denying an application, refusing to act on an application or terminating a certificate is entitled to judicial review of the decision in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. A certificate of public advantage shall not constitute a property right or interest of the recipient.

SECTION 4. Tennessee Code Annotated, Section 68-11-1305, is amended by deleting the language “§ 68-11-1303(d)” wherever it appears and substituting instead the language “§ 68-11-1303(e)”.

SECTION 5. Tennessee Code Annotated, Section 68-11-1306(b), is amended by deleting the subsection and substituting instead the following:

(b) If the department determines that the applicants have not established by clear and convincing evidence that the likely benefits resulting from a cooperative agreement outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, then the agreement is invalid and has no further force or effect, except that the state action immunity and the department’s active supervision shall continue until the plan of separation in §68-11-1303(g) has been determined by the department to be complete.

SECTION 6. Tennessee Code Annotated, Section 68-11-1307, is amended by deleting the section and substituting instead the following:

(a)

(1) Parties to a cooperative agreement who have applied to the department for a certificate of public advantage shall pay the charges incurred in the examination of the initial application and, in the event the certificate of public advantage is approved, the charges incurred for the review and ongoing

supervision of the agreement, including the expenses of the commissioner, and the expenses of the commissioner's assistants, including, but not limited to experts and examiners employed in the examination and review.

(2) The compensation of the assistants, experts and examiners designated by the commissioner for examining the agreement and all records deemed relevant by the commissioner for the examination and review shall be fixed by the commissioner at an amount commensurate with usual compensation for like services.

(b) The commissioner may contract, in accordance with applicable state contracting procedures, for qualified experts, the commissioner deems necessary to conduct examination and review of the agreement and the parties' records.

(c) The full cost of the examination and ongoing review fixed by the commissioner shall be paid into the department for its use and benefit in meeting the expenses and compensation for the assistants, experts and examiners engaged in the examination and review.

(d) The department may promulgate rules to implement this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, but rules are not necessary for the operation of this part.

SECTION 7. Tennessee Code Annotated, Section 68-11-1308, is amended by adding the following language at the end of the section:

Furthermore, nothing in this part shall be construed as authorizing a public benefit hospital entity to enter into a public benefit hospital conveyance transaction without complying with the requirements of the Public Benefit Hospital Sales and Conveyance Act of 2006, compiled in title 48, chapter 68, part 2, or shall be construed as impacting in any way the authority of the attorney general and reporter with respect to public benefit hospital conveyance transactions under that act.

SECTION 8. This act shall take effect upon becoming a law, the public welfare requiring it.